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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

NORFOLK & P. TRACTION CO. v. FORREST'S ADM'X.

June 10, 1909.

[64 S. E. 1034.]

1. Street Railroads (§ 111*)—Injury to Traveler—Speed Ordinance—Pleading.—Where, in an action for injuries to a traveler in a collision with a street car at a crossing, the negligence charged was that defendant ran its car at a rate of speed dangerous to persons traveling along and on the highway at the place of the accident, and violation of a speed ordinance was not relied on as a ground of negligence, the ordinance was admissible to prove negligence, though not pleaded.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig. § 111.* 12 Va.-W. Va. Enc. Dig. 841.]

2. Evidence (§ 32*)—Judicial Notice—Municipal Ordinance.—Courts do not take judicial notice of municipal ordinances, which must be established by evidence; but, when proven, they stand on the same footing as statutes.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 42; Dec. Dig. § 32;* Appeal and Error, Cent. Dig. § 2959. 8 Va.-W. Va. Enc. Dig. 642.]

3. Street Railroads (§ 94*)—Injury to Travelers—Speed Ordinances—Violation.—Violation of a city speed ordinance by a street railway company at the time the traveler was injured in a collision with the car is evidence of negligence, though the ordinance imposes a penalty for its violation.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 201; Dec. Dig. § 94.* 12 Va.-W. Va. Enc. Dig. 841.]

4. Street Railroads (§ 118*)—Injury to Travelers—Excessive Speed—Signals—Instructions.—Where, in an action for injuries to a traveler in a collision with a street car, plaintiff's evidence showed that the excessive speed of the car and motorman's failure to give proper signals of its approach to the crossing, one or both, were the proximate cause of the accident, an instruction that intestate could assume that defendant's servants operating the car would give the proper signals and not run at an excessive rate of speed over the crossing, and that he had the right to drive his wagon across or even along

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

the track in full view of the approaching car if, under all the circumstances, it was consistent with ordinary prudence to do so, was proper.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig. §§ 258-269; Dec. Dig. § 118.* 12 Va.-W. Va. Enc. Dig. 842.]

5. Street Railroads (§ 118*)—Injury to Travelers—Instructions.—In an action for injuries to intestate, in collision with a car at a street railroad crossing, an instruction that if, under the surrounding circumstances, it would have been reasonably apparent that with ordinary care, and if defendant's servants had used ordinary care in driving the car, intestate could have driven across the tracks without collision, then he was not negligent, and if defendant's servants did not use ordinary care in operating the car in one or more of the particulars alleged, and as a direct and proximate result thereof intestate was injured, the jury should find for plaintiff, was not objectionable as ignoring the subject of contributory negligence.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 258-269; Dec. Dig. § 118.* 12 Va.-W. Va. Enc. Dig. 842, 843.]

6. Street Railroads (§ 118*)—Injury to Travelers—Crossing Accidents—Instructions.—In an action for injuries to a traveler at a street railroad crossing, the court charged that if, at the time intestate was injured, there was in force in the city an ordinance making it unlawful to operate a trolley car over a street crossing without first reducing the speed to not more than three miles an hour, and requiring the ringing of the gong continuously after passing a point 50 feet from the crossing, intestate, when approaching the crossing, was entitled to assume that defendant's servants would obey the ordinance, and, if it would have been reasonably apparent to an ordinarily prudent person that he could have crossed the track without danger of a collision, he was not guilty of negligence in attempting to do so. Held, that such instruction was correct.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig. § 118.* 12 Va.-W. Va. Enc. Dig. 842, 843.]

7. Street Railroads (§ 118*)—Injury to Travelers—Instructions—Last Clear Chance.—In an action for injuries to intestate, in a collision with a street car at a street railroad crossing, an instruction that if, after defendant's servants in charge of the car knew, or in the exercise of ordinary care ought to have known, of the danger to which intestate was exposed in crossing the track in front of the car, they could have avoided the accident by exercising ordinary care, but failed to do so, and intestate was injured as alleged, they should find for plaintiff, whether intestate was negligent at the time or not, correctly submitted the doctrine of last clear chance.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 268; Dec. Dig. § 118.* 12 Va.-W. Va. Enc. Dig. 843; 10 Id. 389, et seq.]

8. Street Railroads (§ 117*)—Injury to Travelers—Last Clear Chance—Evidence.—Where, in an action for injuries in a collision with a street car at a street railroad crossing, plaintiff's evidence showed that when the car was 150 feet away intestate was actually driving across the track, but, notwithstanding this, he was struck and injured, the court properly submitted plaintiff's right to recover under the last clear chance doctrine.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 248-250; Dec. Dig. § 117.* 12 Va.-W. Va. Enc. Dig. 843; 10 Id. 389, et seq.]

9. Street Railroads (§ 118*)—Injuries—Instructions.—Where the jury were properly instructed as to intestate's duty to exercise reasonable care for his own safety, the court did not err in refusing to ingraft an exception precluding recovery in case intestate was guilty of negligence on an instruction submitting plaintiff's right to recover under the last clear chance doctrine.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig. § 118.* 7 Va.-W. Va. Enc. Dig. 742; 10 Id. 389, et seq.]

10. Street Railroads (§ 118*)—Injury to Travelers—Crossings—Action—Instructions.—A requested charge that plaintiff could not recover for injuries to intestate in a street car collision at a crossing, if intestate could have known, by the exercise of ordinary care, "that there was even a small chance" that the car would not stop in time to avoid a collision, was properly refused; intestate being only required to exercise ordinary care to avoid the accident under the existing circumstances.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 268-269; Dec. Dig. § 118.* 12 Va.-W. Va. Enc. Dig. 842.]

11. Street Railroads (§ 117*)—Injury to Traveler—Question for Jury.—Where intestate was injured in a collision with a street car at a crossing, and the evidence was conflicting as to whether he started to check his horses before crossing the track, and the motorman testified that both he and deceased checked at the same time, the court properly refused to charge as a matter of law that, if the motorman saw deceased pull up and stop his horses, he could assume deceased would not drive in front of him.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 243-246; Dec. Dig. § 117.* 12 Va.-W. Va. Enc. Dig. 843; 10 Id. 415, et seq.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

12. Trial (§ 260*)—Instructions—Requested Charge—Instructions Given.—It is not error to refuse requests to charge, the subject-matter of which is covered by instructions given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 742.]

Judgment affirmed. All the judges concur.

COMMISSION OF FISHERIES et al. v. HAMPTON ROADS
OYSTER PACKERS' & PLANTERS' ASS'N.

June 10, 1909.

[64 S. E. 1041.]

1. Fish (§ 7*)—Oyster Beds—Survey—Effect—Statutes.—Const. 1902, § 175 (Code 1904, p. cclxiv), provides that the natural oyster beds shall be held subject to such regulations as the Assembly may prescribe, and that such beds may be determined by survey or otherwise. Acts 1891-92, p. 816, c. 511, provides for a survey of such beds, requires the plats to be filed in the clerk's office in each county where the beds are found, and declares that the survey and report, when filed, shall be conclusive evidence of the boundaries of the natural oyster beds, subject to the oyster laws of the state. By act March 2, 1894 (Acts 1893-94, p. 605, c. 559; Code 1904, § 2130a), the prior law was amended so that the report and survey should constitute conclusive evidence that there were no natural oyster beds in the waters of the county wherein the report and survey were filed other than those embraced therein. Held that, where the survey was relocated and the lines as re-established showed that complainant's oyster ground was within the survey, it was conclusive evidence that such was the fact.

[Ed. Note.—For other cases, see Fish, Dec. Dig. § 7.* 10 Va.-W. Va. Enc. Dig. 623.]

2. Fish (§ 7*)—Oyster Ground—Assignment—Acts of Inspector.—Acts of the state oyster inspector in assigning oyster ground, as authorized by Code 1904, § 2137, are ministerial, though he is required to determine the existence of facts which makes it necessary for him to act.

[Ed. Note.—For other cases, see Fish, Dec. Dig. § 7.* 10 Va.-W. Va. Enc. Dig. 623.]

3. Fish (§ 7*)—Natural Oyster Beds—Establishment.—The boundaries of natural oyster beds, rocks, and shoals are conclusively established by the Baylor survey, and report made to the fish commissioners.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.